UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

PACIFIC THEATERS EXHIBITION CORPORATION d/b/a ARCLIGHT CINEMAS[1]

Employer

and Case 31-RC-8610

MOTION PICTURE AND VIDEO PROJECTIONISTS LOCAL 150, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, AFL-CIO,CLC.

Petitioner

DECISION AND DIRECTION OF ELECTION

The Motion Picture and Video Projectionists Local 150, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, CLC ("IATSE Local 150" or "the Petitioner") filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent all full-time and regular part-time projectionists employed at Arclight Cinemas2 located at 6360 Sunset Boulevard in Hollywood, California. The Employer asserts that the petitioned-for employees are encompassed in a collective bargaining unit that is covered by a collective-bargaining agreement and, therefore, there is a contract bar to the holding of an election in the petitioned-for unit. For the reasons set forth below, I conclude that the collective-bargaining agreement in question does not serve as a contract bar with respect to the petitioned-for unit.

[1] The name of the Employer has been corrected to be consistent with the record evidence in this matter. There was a disagreement between the parties with respect to the identity of the Employer of the employees in the petitioned-for unit. It appears from the record that the disagreement might have been resolved in an off-the-record discussion, but the specifics of any such resolution were not memorialized in the record. The Petition names "Arclight Cinemas" as the Employer in this matter. Pacific Theatres Exhibition Corporation ("PTEC") appeared at the hearing as the Employer and asserts that it is the employer of the employees at issue. The Vice President of Operations for PTEC testified that the employees at Arclight Cinemas are employees of PTEC. PTEC is identified as the Employer in the agreement alleged to be a bar to this proceeding and Arclight Cinemas is listed as a theater covered by that agreement. Based on the foregoing and the record as a whole, I find that it is appropriate to identify the Employer as "Pacific Theatres Exhibition Corporation d/b/a Arclight Cinemas."

[2] Arclight Cinemas includesa facility known as the Cinerama Dome.

[3] This theater is also referred to in the record as the ArcLight Cinemas 15.

[4] I use the term "regular projectionists" to refer to the individuals regularly employed at Arclight as projectionists, as distinguished from the engineers employed under the

Collective Bargaining Agreement described below who might operate projection equipment when required by the Agreement under circumstances described below in connection with certain studio previews and certain movie festivals.

[5] The testimony establishes that references to "moving picture machine operators" are the same as references to "projectionists" or "booth support personnel."

[6] At various places in the record, the parties have referred to these employees by different terms, including: "union represented employees," "union personnel," "bargaining unit personnel," "IATSE personnel," "IA members," "IA employees," "union people," "union techs" and "IA workers." For convenience, I will use the term "union-represented employees" to refer to the employees who must be employed under the terms and conditions of the Agreement.

[7] The Union representative who negotiated the Agreement on behalf of the Union explained that the Agreement does not cover any projectionist work other than the operation of projection equipment at festivals or studio calls under certain circumstances (which are described below). Although Engineers can "run the booth," the projectionists employed by PTEC in the petitioned-for unit cannot necessarily perform the work of Engineers, which, with limited exception, is the work covered by the Agreement.

[8] A studio preview is also referred to as a studio call.

[9] According to a Union representative, the Union attempted to include one of the regular projectionists on the list of individuals eligible to be referred under the Agreement and the Employer refused to include the individual because the Employer did not want to have that one individual receive two separate pay rates – the wage rate for regular projectionists for ordinary work and the contractual wage rate for working at festivals and studio calls when contractually required by the Agreement.

[10] The record contains evidence of one circumstance when, under an extraordinary situation, Arclight projectionists covered for projectionists who walked off the job at another PTEC location.

[11] It is undisputed that the individuals employed as regular projectionists at the Arclight Theatre are not covered by the terms and conditions of employment set forth in the Agreement. They earn substantially lower wages than the wages provided in the Agreement. The contractual article concerning wages provides the wage rates applicable to utility engineers and engineers, who, as described elsewhere, must meet certain technical qualifications that that are not required of the regular projectionists. The Agreement does not provide a wage scale for projectionists, like those in the petitioned-for unit, who are not required to meet the listed qualifications for the engineers.

[12] See, United Artists Communication, 280 NLRB 1056, 1064 (1986), where the Board refused to apply the contract-bar doctrine with respect to a multi-facility agreement that was not applied or enforced at the location at issue. The Board noted that it would be "patently unfair" to rely on that contract to prevent the employees from being properly represented when the employees had been denied the benefits of the contract; Silver Lake Nursing Home, 178 NLRB 478, 480 (1969), where the Board concluded a multiemployer contract was not a bar where the Employer had been exempted from so many of the contractual provisions that the contract was not one to which the parties and the employees at issue could look for "guidance in their day-to-day problems" and the employees at issue failed to receive the benefits of the contract. See also, N. Sumergrade & Sons, 121 NLRB 667, 669 (1958), where the Board refused to apply the contract-bar doctrine in a situation where the parties had not equally applied a contract to all employees, "regardless of whether the contract may purport [on its face] to cover all employees."

[13] In this regard, I particularly note the following facts. Article I states that the Agreement covers all moving picture machine operators and utility maintenance engineers and that moving picture machine operators shall be referred to as employees, engineers or utility engineers. However, elsewhere the Agreement provides that employees covered by the Agreement shall be referred to as engineers or utility projection engineers and it provides that engineers and utility projection engineers shall meet certain qualifications, none of which are required of the projectionists in the petitioned-for unit. Also, as noted above in fn.12, notwithstanding the use of the terms "motion picture machine operators" and "projectionists," the Agreement only provides the wage rates for "utility engineers and engineer." The Agreement uses a confusing array of designations for employees in various other sections as well. For example, the section concerning festivals references "Union projectionists" and "bargaining Unit personnel," as well as "regular Projection Engineer" and "qualified Projectionist." Elsewhere in the Agreement, there are references to "additional technicians."

[14] Apparently, during the negotiation of the Agreement there was some discussion of the creation of a separate pay classification for a position of employees that would "run the booth." Also, under the Agreement, the Employer could assign union-represented employees to operate the projection equipment in other circumstances. I do not find that either of these facts negates my conclusion that the regular projectionists are not covered by the Agreement.

[15] See, The Pembek Oil Corporation, 165 NLRB 367, 375 (1967), where the Board adopted the decision of an Administrative Law Judge who found that a unit including servicemen was appropriate even though two of the servicemen, on occasion, performed work installing burners in buildings under construction, which work was covered by another collective-bargaining agreement. The Judge noted that the other contract would not operate as a bar "at least insofar as the employees not covered by the contract are concerned." Here, the Arclight projectionists are not covered by the Agreement and, therefore, the Agreement cannot operate as a bar with respect to a unit of those employees.

[16] In Lexington, the Board distinguished the Briggs Indiana rule from the contract-bar doctrine, noting that the employees who are the subject of a Briggs Indiana agreement by a union to refrain from organizing "derive no benefit or stability from [the] Briggs Indiana agreement." Similarly, the regular Arclight projectionists derive no benefit or stability from the Agreement and, therefore, the contract bar doctrine should not apply.

[17] There is no record evidence of interchange between the projectionists at the Arclight Theatre and other "cinema crew" employed at that theatre. Also, the Arclight projectionists wear a color uniform different from the other members of the cinema crew, who work in the "front of the house" performing jobs such as taking tickets, selling food, or ushering patrons to their seats.

[18] In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

[19] At the hearing, the Petitioner expressed its desire to be designated by this name on the ballot. The Employer did not oppose this designation.

[20] In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board's web site: www.nlrb.gov .

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

I. FINDINGS

A. HEARING OFFICER RULINGS: The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

C. LABOR ORGANIZATION: The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

D. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

APPROPRIATE UNIT: The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of

Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time projectionists employed by the Employer at 6360 Sunset Boulevard, Hollywood California.

EXCLUDED: Cash handlers, maintenance employees, employees covered under another collective-bargaining agreement, office clerical employees, guards, all other employees, and supervisors as defined in the Act.

In analyzing the issue in this case, I will provide an overview of the Employer's operations and the collective bargaining agreement at issue and then will discuss the positions of the parties, the contract bar doctrine and the application of the contract bar doctrine to this case. Lastly, I will discuss the appropriate unit.

II. DISCUSSION

A. THE FACTS

Pacific Theaters Exhibition Corporation ("PTEC") is in the business of operating motion picture theaters, including the Arclight Cinemas Theatre[3] in Hollywood, the theater at issue herein. PTEC has over 176 screens in the cluster of theaters in the Los Angeles area; there are 15 screens at the Arclight Theater, including what is known as the Cinerama Dome. IATSE Local 150, the Petitioner, is an autonomous IATSE local that participates with other IATSE locals in IATSE District 2 (hereinafter referred to as "the Union") with respect to collective

bargaining agreements that cross the geographical jurisdiction of the different IATSE locals. As noted above, IATSE Local 150 seeks to represent a unit of projectionists employed at the Arclight Cinemas Theatre in Hollywood. There currently are approximately 10 employees regularly employed as projectionists at the Arclight Cinemas Theater. Virtually all of these individuals employed as projectionists at Arclight started working there in another position at Arclight, such as waitress or usher. These regular projectionists[4] employed at Arclight, along with other Arclight employees (such as facility maintenance, cash handlers, wait staff, cooks, ushers and box office employees) are referred to as "crew members."

Before October 2005, PTEC had a collective bargaining agreement with IATSE Local 150 covering certain work at its theaters in Los Angeles County and a separate collective bargaining agreement with IATSE District 2 Locals covering that work at its theaters in California located outside the County of Los Angeles. In October 2005, IATSE District 2 and PTEC entered into a collective bargaining agreement effective October 28, 2005 through October 28, 2009 covering that work at PTEC theaters in California; this 2005-2009 District 2/PTEC Agreement superseded both the 2001-2005 Agreement between PTEC and Local 150 and the 2001-2005 Agreement between PTEC and the remaining District 2 Locals. It is this 2005-2009 District 2/PTEC Agreement (hereinafter "the Agreement") that the Employer alleges to be a contract bar to the instant proceeding.

The Agreement lists various locations covered by the Agreement, including Arclight Cinemas, the location at issue herein. Article I of the Agreement provides

the following with respect to the employees covered by the Agreement:

Article I

> This agreement shall apply to and cover all moving picture machine operators and utility maintenance engineers employed by the Employer at the theatres listed herein but excluding: guards, watchman, supervisors and all other theatre personnel. The moving picture machine operators covered

> by this agreement shall, unless otherwise specifically designated, be referred to as "Employees, Engineers or Utility Engineers." Engineers and Utility Engineers may hereinafter be referred to collectively as "Engineers."

Although the Agreement uses the terms "moving picture machine operators"[5] "utility engineers" and "engineers" interchangeably, the engineers to be referred by the Union and covered by the Agreement must meet certain qualifications described in Article VI relating to the maintenance and repair of equipment. Article VII of the Agreement provides that employees covered by the Agreement shall be referred to as Engineers or Utility Projection Engineers and that Engineers and Utility Projection Engineers must meet the specified qualifications. Therefore, the type of employees covered by the agreement are those that meet these qualifications of Article VI.

The Agreement provides a specific guaranteed minimum number of positions that must be filled with union-represented employees based upon the number of screens at the theaters within a geographical area.[6] Thus, for all of its theaters in California, the Employer is required to employ six full-time employees, including "4

(four) Thirty-five (35) Hour Engineers" for the 176 screens in the Los Angeles County area. These four engineers employed in the Los Angeles area circulate to the various theaters. The Employer can use other staff, including managers, to perform additional unit work. None of the four engineers assigned to work at the theaters in the Los Angeles area pursuant to the staffing requirements of the Agreement are regularly employed as projectionists at Arclight. The staffing requirements are for those employees performing maintenance work on the equipment. The Employer is not required to use union-represented employees for regular day-to-day projection work.[7]

The Agreement provides that when there is a studio preview at a theater, the Employer will use union-represented employees under certain circumstances.[8] Thus, the Agreement provides that engineers will be scheduled when specifically required by the studio and further provides the following:

> When the Employer is engaged to do a screening and there is no Dolby and/or post-production representatives required, screenings may be covered by either hourly talent or the currently assigned Engineer at the management's discretion. If the management so chooses, the Union shall dispatch a qualified Projectionist for such studio call.

The Union dispatches employees for studio previews from a jointly-approved pool of names of qualified individuals. Apparently, when there is a studio preview that

requires the use of a union-represented employee to operate the equipment, one of the four maintenance engineers employed by PTEC in the Los Angeles area under the Agreement would generally operate the projection equipment at the studio preview.

The Agreement similarly provides that when the theater is used in connection with a movie festival, under certain circumstances, employees covered by the Agreement must be used to perform projection work. All festivals at the Cinerama Dome must be covered by union-represented employees. In addition, at other locations, if the festival requires the use of more than two screens, then employees covered by the Agreement must be used to perform work including running the projectors. The article concerning festivals provides that, "festival work can be performed by either the regular Projection Engineer, or if unavailable, then the Union shall assign a qualified Projectionist." However, only the projectionists showing movies on the screens used for the festival must be employed pursuant to the Agreement; the Employer can use the regularly-employed projectionists, or other theater personnel, for the other screens that are not being used for the festival. Thus, if there were three screens used in connection with a festival, the maintenance engineers regularly employed under the Agreement at Arclight and/or employees referred under the Agreement, wearing their own street clothes, would operate the projection equipment for those screens; the regular Arclight projectionists, wearing their Arclight uniforms,

would operate the projection equipment used for the remaining screens. The hours worked performing projectionist duties when required by the Agreement at festivals and studio previews are counted towards the minimum number of hours that the Employer must employ engineers under the Agreement. The regular projectionists in the petitioned-for unit are not required to meet the qualifications in the Agreement and they have not been considered eligible to be referred to work for studio previews or festivals on those occasions that the Employer is required to use union-represented employees.[9]

The Agreement includes the following language with respect to the operation of projection equipment in a clause relating to video/digital projection:

Article IX

> Video/Digital Projection shall be recognized as under the jurisdiction of the Union. The Employer may assign any theatre personnel, regardless of their Union affiliation, to operate projection equipment (This includes film and video Projection by cassette, video tape, digital media, cable, etc.) and perform other functions in the projection booth at any time during operating hours; however, the employer shall schedule Utility Engineer(s) and Engineer(s) as per this agreement.

As noted above, there are 10 regular projectionists employed at Arclight. These projectionists are not required to meet the qualifications set forth in the Agreement for the engineers who perform maintenance and repair on the equipment and they do not perform the maintenance work performed by the utility engineers under the Agreement. The hours worked by these 10 regular projectionists do not count towards contractual minimum staffing requirement under the Agreement. There is no evidence that the Employer has ever called the Union to refer an employee to cover the absence of one of its regular projectionists. The regular projectionists at Arclight wear a uniform that includes a black golf shirt with the words "Arclight Hollywood." The four maintenance engineers employed under the Agreement do not wear the Arclight projectionist uniform (even when performing

projection work); they wear their regular clothing. Similarly, other union-represented employees assigned to operate projection equipment under the circumstances required by the Agreement in connection with festivals and screenings are not required to wear the Arclight projectionist uniform. Unlike the engineers employed under the Agreement, who circulate between various PTEC theaters, the regular projectionists employed at Arclight with rare exception work only at that theater.[10]

B. POSITIONS OF THE PARTIES

The Employer alleges that the Agreement serves as a contract bar to an election in the petitioned-for unit. In support of this position, the Employer asserts the following arguments. Since the Agreement on its face covers moving picture machine operators as well as utility maintenance engineers at theaters listed in the Agreement, including the Arclight Cinemas, the Agreement clearly serves as a bar to this proceeding. Also, the fact that Article 9 states that video/digital projection shall be recognized under the

jurisdiction of the Union further establishes that the Union has not relinquished jurisdiction over projectionist work. Since the contract on its face covers projectionists, it would not be appropriate to consider parol evidence to determine the intent of the parties. Although the Agreement covers all projection work at the covered theaters, the Agreement does permit the Employer to use other non-unit employees to perform projection and maintenance work other than the contractually required minimum hours required for the theaters and the work required for festivals and previews under certain circumstances. The fact that the Agreement permits the Employer to use other employees to perform this projection work indicates that the work otherwise would be covered by the Agreement and considered to be unit work. Therefore, the Agreement covers the work of projectionists and would bar an election in the petitioned-for unit.

The Union asserts that since the employees in the petitioned-for unit are not covered by the Agreement, there is no contract bar. Furthermore, the Union has not waived its right to organize the projectionists at Arclight. The Union notes that it is a non-sequitor to argue that the fact the Employer negotiated a right to use non-unit employees to perform unit work means that the non-unit employees are in the unit encompassed by the Agreement.

C. THE CONTRACT BAR DOCTRINE

Under the Board's contract-bar doctrine, in appropriate circumstances, the existence of a collective-bargaining agreement will bar a Board representation election involving the employees covered by the contract. Direct Press Modern Litho, 328 NLRB 860 (1999). In Appalachian Shale Products, 121 NLRB 1160, 1161 (1958), the Board clarified the application of the contract bar doctrine and noted the goal of "achieving a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." The general requirements for the application of the contract-bar rule are that the agreement must be signed by the parties prior to the filing of the petition and must contain substantial terms of conditions and employment sufficient to stabilize the parties' bargaining relationship. Waste Management of Maryland, 338 NLRB 1002 (2003). As the Board noted in Direct Press Modern Litho, supra at 860, the contract bar doctrine is not compelled by the Act or by judicial decision; it is an administrative device adopted by the Board. The Board has discretion whether to apply the contract bar doctrine or waive its application in a given case and in doing so the Board will be guided by its "interest in stability and fairness in collective bargaining agreements." Id at 860-861.

D. APPLICATION OF THE CONTRACT BAR DOCTRINE TO THIS CASE

The Petitioner seeks to represent a unit of regular projectionists employed at the Arclight Theatre. The individuals regularly employed as projectionists at the Arclight Theatre are not covered by the Agreement that the Employer asserts to be a bar to the holding of an election in the petitioned-for unit.[11] As noted above, the Board has described its contract-bar doctrine as barring an election involving the employees "covered by the contract." Direct Press Modern Litho, supra at 860. Being mindful of the policy underlying the contract-bar doctrine, I conclude that since the employees in the petitioned-for unit are not covered by the contract, it would not be appropriate to apply the contract bar doctrine so as to preclude these employees from exercising their free choice in the selection of their bargaining representative.[12]

I note the Employer's argument that the language of the Agreement indicates that moving picture machine operators (which are the same as projectionists) are covered by the Agreement. Given the ambiguity, however, of the language in the Agreement, it is appropriate to consider parol evidence to understand the coverage of the Agreement.[13] I conclude that the Agreement is, as described by the Union representative who negotiated it, essentially a maintenance agreement, covering the maintenance engineers who meet certain technical qualifications. Under certain circumstances, the Employer is contractually required to use union-represented employees under the Agreement in connection with projection work for festivals and studio previews; however, this requirement does not mean that the regular projectionists who perform the day-to-day projection work are encompassed in the unit covered by the Agreement. In this regard, I note that in its Post-Hearing Brief, the Employer describes the requirement that when there is a festival that uses more than two screens the Employer must use "employees covered by the CBA" to operate the projectors, but if there are two screens or less used for the festival, the Employer can use "other employees" to perform those functions. The record establishes that the projectionists in the petitioned-for unit are not treated as

"employees covered by the CBA" who can operate the projectors when there are more than two screens used for a festival, but rather are the "other employees" who perform that function in other circumstances.[14]

In the circumstances herein, it would not be appropriate to find the Agreement covering the maintenance engineers (who may, on occasion, perform some incidental

projection duties) serves as a bar to an election in a unit of the regular Arclight projectionists, who are not covered by the Agreement.[15] As the Board noted in Appalachian Shale Products, supra at 1164, "[t]o serve as a bar, a contract must clearly by its terms encompass the employees sought in the petition." The Agreement at issue herein does not "clearly by its terms encompass" the regular projectionists and, therefore, can not serve as a contract bar to an election in the petitioned-for unit. I further find that there is no evidence that the Union in any way agreed to waive a right to organize or represent the regular projectionists at Arclight. See, Lexington Health Care Group, 328 NLRB 894 (1999), applying the rule of Briggs Indiana, 63 NLRB 1270 (1945)(holding that if a union promises not to represent certain categories of employees during the term of an agreement, the union can not file a petition seeking to represent those employees during the term of that agreement).[16]

E. APPROPRIATE UNIT

Having found that the Agreement does not serve as a contract bar to the holding of an election in the petitioned-for unit, I further find that a unit of projectionists at the Arclight Cinemas Theatre is an appropriate unit. The Board has long held that the Act does not require that a unit for collective bargaining be the only appropriate unit or even the most appropriate unit; the Act only requires that the unit be an appropriate unit. Morand Bros. Beverage, 91 NLRB 409, 418 (1950).

The regular projectionists employed at Arclight share a community of interests apart from the maintenance engineers employed under the Agreement who circulate to work at various theaters, wear a different uniform, have different job skills, and earn significantly greater wages than the Arclight projectionists. Further, the Arclight projectionists have a community of interest apart from the employees at the other PTEC theater locations. With one rare exception, in an emergency situation (when projectionists at another PTEC theater walked off the job), there is no evidence that the projectionists at Arclight interchange with any of the projectionists or other employees at any of the other PTEC locations. Moreover, it appears that the projectionists at Arclight have a sufficient community of interest apart from the other Arclight employees to render them an appropriate unit of employees for collective bargaining.[17] Therefore, I am directing an election in the unit described above in Section I of this Decision and Direction of Election.

There are approximately 10 employees in the above-described appropriate unit.

DIRECTION OF ELECTION[18]

I shall conduct an election by secret ballot among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

ELIGIBLE TO VOTE: Those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, are eligible to vote. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such

strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls.

INELIGIBLE TO VOTE: Employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that commenced more than 12 months before the election date and who have been permanently replaced are ineligible to vote.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Motion Picture and Video Projectionists Local 150, IATSE.[19]

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the FULL names and addresses of all the eligible voters, must be filed by the Employer with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest.I shall, in turn, make the list available to all parties to the election only after I have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or be-fore, December 14, 2006. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

A request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, under the provision of Section 102.67 of the Board's Rules and Regulations. This request must be received by the Board in Washington by December 21, 2006.[20]

DATED at Los Angeles, California this 7th day of December, 2006.

James J. McDermott, Regional Director
National Labor Relations Board
Region 31